

APR 21 2011

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

ROBERT M. THOMAS,

Plaintiff,

v.

DR. HARVARD STEPHENS,

Defendant.

) Civil Action No. 7:10CV00090

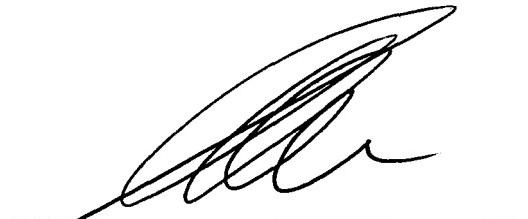
) FINAL ORDER ADOPTING
REPORT AND RECOMMENDATION

) By: Samuel G. Wilson
United States District Judge

This is an action pursuant to 42 U.S.C. § 1983 by plaintiff, Robert M. Thomas, a Virginia inmate complaining that defendant, Dr. Harvard Stephens, the Chief Physician of Health Services for the Virginia Department of Corrections has been deliberately indifferent to Thomas' need for cataract surgery. The court referred the matter to United States Magistrate Judge, Michael F. Urbanski pursuant to 28 U.S.C. § 636(b)(1)(B) for a report and recommendation. The Magistrate Judge has filed a report recommending that the court enter summary judgment for Dr. Stevens because Dr. Stevens has not been deliberately indifferent but rather has concluded, pursuant to standards endorsed by the Mayo Clinic and the American Society of Ophthalmology, that Thomas is not currently in need of surgery. Thomas has filed an objection arguing that the Magistrate Judge wrongly concluded that cataract surgery is not a serious medical need. The court has reviewed the Magistrate Judge's report, and pertinent portions of the record, and notes that it does not read the Magistrate Judge's report to conclude that Thomas' cataracts may not constitute a serious medical need warranting surgery in the future but simply that Thomas' cataracts do not present an immediate need of surgery. Under the circumstances, the record discloses a disagreement as to the current necessity of surgery, it does not disclose deliberate indifference.

Accordingly, It is **ORDERED** and **ADJUDGED** that the Magistrate Judge's report is **ADOPTED**, summary judgment is **ENTERED** for defendant, Dr. Harvard Stevens, and this case is **STRICKEN** from the docket of the court.

ENTER: This April 21, 2011.



UNITED STATES DISTRICT JUDGE